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IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 17596 of 2004

Between:

Vakalapudi Venkatarathnam, S/o. Rama Rao,
R/o. Kanuru Village, Peravali Mandal, West Godavari District.

..... PETITIONER

AND

1 Regional Joint Commissioner, Endowments Department, Kakinada, East Godavari District.
2 The Assistant Commissioner, Endowments Department Eluru, West Godavari District.
3 Sri Vallabhaswamy Devasthanam, Kanuru Village, Peravali Mandal, West Godavari District. rep by its Manager .
4 Sadanala Srinivas, S/o. Satyam,
R/o. Kanuru Village, Peravali Mandal, W.G. District.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring that the orders of the 2nd respondent vide RC No. A1/2782/2004 ADM dt. 5-06-2004 which was confirmed by the 1st respondent in Appeal No. 78/2004 dt. 26-9-2004, and conducting auction on 05-07-2004 by the 3rd respondent are illegal, arbitrary, high handed, unconstitutional and violative of Article 14 and 21 of the Constitution of India and contrary to the provisions of Act 30 of 1987 and rules made in G.Ms.No. 379 dt. 11-3-2003 and the same are liable to be set aside, and consequently direct the respondent authorities to continue the petitioner as cultivating tenant in the above lands an extent of Ac. 4-97 cents covered by S.No. 174/3, 174/4 of Kanuru Village, Peravali Mandal, W.G. District, by

extending the benefits as provided under Sectrion 82(2) of the Act and to pass such other order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case.

Counsel for the Petitioner:MR.G.KRISHNA MURTHY

Counsel for the Respondents 1&2: GP FOR ENDOWMENTS

Counsel for Respondent No.3: Sri V.L.N.G.K. Murthy.

Counsel for Respondent No.4: Sri K.Subrahmanya Narusu.

The Court made the following :

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THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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WRIT PETITION NO. 17596 OF 2004

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ORDER:

Heard Sri G.Krishna Murthy, learned counsel appearing for the petitioner, learned Government Pleader appearing on behalf of the respondents 1 and 2, Sri V.L.N.Gopala Krishna Murthy, learned counsel appearing on behalf of respondent No.3 and

Sri K.Subrahmanya Narasu, learned counsel appearing on behalf of respondent No.4.

2. The petitioner claiming to be a cultivating tenant in respect of the land to an extent of Ac.4.97 cents in R.S.Nos.174/3 and 174/4 belonging to the third respondent herein, files this writ petition *inter alia* seeking writ of Mandamus challenging the correctness of the orders passed by the second respondent dated 05-06-2004 and as confirmed by the first respondent in appeal dated 26-09-2004 and also the

proceedings of auction held on 05-07-2004 by the third respondent as illegal.

3. The case of the petitioner is that he is a landless poor person owning small extent of Ac.0.26 cents of land and he is a cultivating tenant of the aforesaid land belonging to the third respondent herein since the year 1978 and he is paying rents regularly all along and the initial rent was at Rs.6,600/-, which was subsequently enhanced to Rs.9,940/- per year. Though the land in question initially was dry without any authorized source of irrigation, the same was developed by the petitioner and he dug a bore well by affixing an electric motor after obtaining the service connection from the Electricity Department. He also raised sheds to the motor for the purpose of manufacturing of jaggery in the rainy season and thereby he had spent a sum of Rs.1,00,000/- and more. In the meanwhile, the provisions of the A.P. Charitable and Endowments Act 30 of 87 was amended and rules were framed in G.O.Ms.No.379, dated 11-03-2003 in regard to the lease of lands belonging to the Institutions. The petitioner had filed an application before the second respondent herein for determining that he is a landless poor person and to confer the benefits thereunder. The petitioner also submitted a certificate issued by the Mandal Revenue Officer and Panchyat Secretary. In pursuance of the said application, the 2nd respondent issued a notice on 10-03-2004 for an enquiry to be held on 05-04-2004 at 11.00 AM. No enquiry could be conducted as the Presiding Officer was in camp at Hyderabad, though the petitioner appeared on that day, and he was informed that further notice would be issued. Instead of issuing fresh notice for conducting enquiry, the second respondent passed the orders dated 05-06-2004, which was received by the petitioner on

12-06-2004 holding that the petitioner is not a landless poor person, and therefore he is not entitled to any relief and rejected the application. It is stated that the said orders of rejection are totally opposed to the principles of natural justice and are being one without any enquiry. Aggrieved thereby, the petitioner had filed appeal on 12-07-2004 and the same was pending. Instead of awaiting proceedings in the appeal, the third respondent conducted auction of leasehold rights of the lands on 05-07-2004 for the period 2004-2007 even-though there exists a standing crop of sugar cane and banana raised by the petitioner. The petitioner had already paid rentals for the year 2003-2004. Apparently, in view of the fact that no interim orders were granted in the said application filed by the petitioner in appeal, the third

respondent sought to conduct such an auction, which is totally illegal especially without dispossessing the petitioner legally. Therefore, the petitioner had to file a Writ Petition No.13681 of 2004 challenging the said action of conducting auction and also seeking not to dispossess the petitioner. This Court granted interim direction on 04-08-2004 not to dispossess the petitioner from the land. Ultimately the main writ petition was disposed of as per the orders dated 11-08-2004 directing the first respondent/appellate authority to dispose of the appeal within a period of four weeks from the date of receipt of the said order and further direction to the third respondent not to dispossess the petitioner from the said land. Therefore, the petitioner submits that the very action of conducting auction by the third respondent is totally illegal and arbitrary. Meanwhile, the fourth respondent had filed a suit in O.S.No.574 of 2004 on the file of Principal Junior Civil Judge, Tanuku seeking interim direction and the said application was pending. It is also stated that during consideration of the review application filed by the fourth respondent against the orders passed by this Court on 11-08-2004, the petitioner was informed about the official disposal of the appeal as per orders dated 26-09-2004 though the petitioner did not receive any copy of such order nor was he heard. It is to be seen that the date on which the said order passed was a public holiday being Sunday; therefore, the entire proceedings in the appeal are totally vitiated and opposed to the principles of natural justice. The petitioner submits that there is absolutely no proper consideration for his case in rejecting his claim on the ground that he is not a landless poor person. Hence, the writ petition.

4. Contesting the claim of the petitioner, all the respondents together sought to deny the entire allegations and further claim that the possession was taken from the petitioner on 15-06-2004 in the presence of elders and followed by the public auction wherein the fourth respondent was the auction purchaser. The fourth respondent also filed the aforesaid suit in O.S.No.574 of 2004 and the same is pending including interim application filed in the said suit. It is further submitted that having filed an appeal and sought Stay, the petitioner has un-necessarily rushed to this Court challenging the auction. Therefore, it is stated that the petitioner is not entitled to any relief. Further it is also submitted that having regard to the evidence and material available, the petitioner is not entitled to claim as landless poor person as contemplated under the provisions of the Endowments Act. Hence, they sought

for dismissal of the writ petition.

5. Considering the submissions made and also perusal of the material, the main point which requires to be assessed is as to whether on the facts and circumstances of the case, the rejection of the petitioner's claim as landless poor person by the second respondent and followed by the first respondent is valid.

6. On the facts as spoken by both sides, there is no dispute that the lands in question belong to the third respondent which is a religious Institution governed by the provisions of the A.P. Charitable and Religious Endowments Act, 1986 whereas the petitioner claims as a cultivating tenant and further being a landless poor person, is entitled to the relief as sought to be conferred under the aforesaid Act and the Rules made thereunder. In this connection, the petitioner admittedly filed an application before the second respondent herein. There is no dispute to the fact that the enquiry was fixed on 05-04-2004 in pursuance of the notice issued on 10.03.2004. Admittedly, the Presiding Officer of the second respondent was not available since he was in camp at Hyderabad, no enquiry was conducted nor there was any progress on that day. Further having regard to the fact that the Presiding Officer himself was absent, question of any progress also does not arise. Admittedly, no fresh notice of enquiry was given to the petitioner nor any date of enquiry was fixed with due intimation to the petitioner, straight away the second respondent passed the orders on 05-06-2004 which was said to have been received by the petitioner on 12-06-2004 rejecting his claim. On the face of it, the said order was passed without conducting any enquiry and without giving any opportunity to the petitioner of hearing his case in the teeth of the mandate of principles of natural justice. Further, the petitioner had filed an appeal on 12-07-2004 itself before the first respondent along with application for Stay, however, no interim orders were granted. It is also stated that since the petitioner received the said orders on 12-06-2004, he had time up to
11-07-2004 and the said last date being a public holiday as Sunday, he could file the appeal on 12-07-2004. Apparently, the period of limitation for preferring an appeal under the rules is 30 days. Therefore, exactly on the 30th day from the date of passing orders by the second respondent herein, the third respondent sought to

conduct auction on 05-07-2004. The petitioner claims that there exists a standing crop of sugar cane and also banana. In this respect, there is no serious denial from any of the sides. The said auction proceedings were set aside by this Court in the earlier writ petition filed by the petitioner in W.P.No.13681 of 2004 which was disposed of on 11-08-2004 with a direction to dispose of the main appeal filed by the petitioner on 12-07-2004 and also not to dispossess the petitioner from the above land till the disposal of the suit. Having regard to the said fact that the auction proceedings were already stayed at not by this Court, it is not open for any of the respondents to conduct auction of the lands and make any claim thereunder. The fourth respondent herein claims to be the auction purchaser whose bid was sought to be accepted in the very same auction held on 05-07-2004, which was set aside by this Court in W.P.13681 of 2004. The fourth respondent also claims that the petitioner was already dispossessed from the land prior to the said auction and he was put in possession as a consequent to the said auction. These statements cannot possibly be accepted in view of the orders passed by this Court in W.P.13681 of 2004 wherein the very auction proceedings were set aside and the petitioner was asked not to be dispossessed by the third respondent herein. Admittedly, the said orders in the earlier Writ Petition No.13681 of 2004 were not challenged by either the third respondent or the fourth respondent and they were allowed to be final conclusive. Further, it is curious to note that consequent upon the dismissal of the application filed by the petitioner on 05-06-2004, no proceedings have been referred to by the respondents herein under which the petitioner was dispossessed. Be that as it may, having regard to the orders passed by this Court in W.P.No.13681 of 2004 dated 11-08-2004, it is not open for the respondents herein to contend that the petitioner was dispossessed and was not in possession as such. Further even the appeal filed by the petitioner was ultimately dismissed on 26-09-2004 without even providing an opportunity of hearing to the petitioner. There is no explanation forthcoming or any specific plea on the part of the first respondent that the petitioner was heard prior to its disposal. Thus, at either of the level, the petitioner's claim stood rejected without providing minimum opportunity of hearing or even conducting an enquiry as contemplated under the law. It is now well established that both the authorities namely respondents 1 and 2 being a Statutory one discharging such quasi judicial powers where the substantive rights of the authorities are being sought to be enquired into and decided, it is not open for them to have a say either way without holding proper enquiry with due notice and

opportunity to the authorities concerned. Admittedly, in this case at both the levels, the petitioner was neither heard nor there was any such enquiry. In the circumstances, it has to be held that the entire proceedings before the second respondent as well as first respondent are totally vitiated and are under the teeth of the mandate under the principles of natural justice.

7. The writ petition is, accordingly, allowed. Both the impugned orders dated 05-06-2004 and 26-09-2004 of the respondents 2 and 1 respectively are set aside and the matter is remitted back to the third respondent for fresh disposal on merits in accordance with law after giving opportunity to both the sides. It is needless to mention that the standing crop existing on the land could belong to none else the petitioner and he is entitled to harvest the same.

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B. PRAKASH RAO, J

24 -01-2005.

Chvn.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this theMonday, the Twenty fourth day of January, Two thousand and five.

ASSISTANT REGISTRAR.

// TRUE COPY//

SECTION OFFICER.

To

1 Regional Joint Commissioner, Endowments Department, Kakinada, East GodavariDistrict.
2 The Assistant Commissioner, Endowments Department Eluru, West Godavari District.
3 The Manager, Sri Vallabhaswamy Devasthanam, Kanuru Village, Peravali Mandal,WestGodavariDistrict.
4 Two CCs to the G.P. for Endowments, High Court Buildings, Hyderabad.(OUT).

5 Two C.D. copies.